

REMARKS

Claims 1-3 and 6-27 are pending in this application. Claims 4 and 5 have been canceled without prejudice or disclaimer. Claims 12-27 are newly added. Claims 1-3 and 6-11 stand rejected. Favorable reconsideration is respectfully requested in view of the following remarks.

Claims 1 and 3 were rejected under 35 USC 102(b) as being anticipated by WO 96/24958. This rejection was withdrawn in the Advisory Action mailed May 20, 2004.

Claims 1 - 11 were rejected under 35 USC 103(a) as being unpatentable over Wilkinson et al. (US app. pub. no. 2003/0082432, hereafter "Wilkinson"). Of these claims, claims 1-3 and 6-11 remain pending. To establish a prima facie case of obviousness under § 103, all claim limitations of a claimed invention must be taught or suggested by the prior art. See MPEP, Section 2143.03 and In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In view of the foregoing authority, it is respectfully submitted that the cited reference does not support the asserted rejection.

Independent claim 1, and dependent claims 9 - 11 have been amended to change the language indicating alternatives ("at least one of") to language requiring each of the recited elements. Wilkinson plainly does not teach or suggest each of the specific structural features enumerated in the latter claims, and therefore cannot support the asserted rejection. Withdrawal of the rejection of claims 1-3 and 6-11 as unpatentable over Wilkinson is therefore respectfully requested.

New independent claim 12, in addition to reciting a number of the features recited in claim 1, further recites a two-part diffusion layer, or more specifically, a "diffusion layer having a water repellent layer and a substrate layer". There is no teaching or suggestion in Wilkinson of such a two-part diffusion layer distinct from a catalyst layer, as required by claim 12. Note is taken of the alleged equivalence in the Office Action between the claimed water repellent layer and elements in paragraph 25 of Wilkinson. However, it is observed that paragraph 25 refers only to a "first electrode substrate" and does not refer to a catalyst layer of the substrate. Indeed, throughout, Wilkinson only describes generally various ways of causing properties of a fuel cell electrode to change as the electrode is traversed in-plane, but never describes particular structures with


anything approaching the specificity of the present claims. The Applicant respectfully submits that the general references to porosity or electrocatalyst loading cannot yield the specific structures recited in the present claims. Accordingly, independent claim 12, and claims 13-27 dependent thereon, are allowable over Wilkinson.

In light of the above discussion, Applicant respectfully submits that the present application is in all aspects in allowable condition, and earnestly solicits favorable reconsideration and early issuance of a Notice of Allowance.

The Examiner is invited to contact the undersigned at (202) 220-4323 to discuss any matter concerning this application. The Office is authorized to charge any fees related to this communication to Deposit Account No. 11-0600.

Respectfully submitted,

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